

#29

Docket No.: 50341-041

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of : Customer Number: 20277  
Joanne Elizabeth BURN, et al. : Confirmation Number:  
Serial No.: 09/857,346 : Group Art Unit: not yet assigned  
Filed: June 04, 2001 : Examiner: not yet assigned  
For: CONTROL OF FLOWERING

**FORWARDING DUPLICATE COPY OF RESPONSE TO DECISION ON REQUEST FOR  
RECONSIDERATION VIA FACSIMILE 703-308-6459**

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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20 AUG 2004

Sir:

**Legal Staff  
International Division**

In accordance with a telephone conversation with Examiner Dombroske, it was determined that our Response to Decision on Request for Reconsideration timely filed on March 30, 2004 has not been entered or matched with the file. In that regard, we provide herewith a duplicate copy of the Response as filed and a copy of our date stamped receipt card evidencing the date of filing of March 30, 2004. It is respectfully requested that the Response be entered and made of record and a Decision be issued with regard to this matter.

Respectfully submitted,

MCDERMOTT WILL &amp; EMERY LLP



Daniel Bucca, Ph.D.  
Registration No. 42,368

600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
202.756.8000 DB:kmb  
Facsimile: 202.756.8087  
Date: August 20, 2004

**Certification of Facsimile Transmission**

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Katherine M. Bell  
Type or print name of person signing certification  
Katherine M. Bell 8/20/04  
Signature Date

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Applicant: <u>Joanne Elizabeth BURN, et al.</u>		Docket No. <u>50341-041</u>	
Title: <u>CONTROL OF FLOWERING</u>		Serial/Reg./Patent No. <u>09/857,346</u>	
Date Sent: <u>3/30/2004</u>	<input checked="" type="checkbox"/> Hand Carried	<input type="checkbox"/> Fax	<input type="checkbox"/> Electronic
	<input type="checkbox"/> Cert. of Mailing	<input type="checkbox"/> Express Mail No. _____	
<input type="checkbox"/> Transmittal Letter <input type="checkbox"/> New Patent App <input type="checkbox"/> Utility <input type="checkbox"/> Design <input type="checkbox"/> Cont. <input type="checkbox"/> CIP <input type="checkbox"/> Div. <input type="checkbox"/> PCT <input type="checkbox"/> RCE <input type="checkbox"/> Prov <input type="checkbox"/> Other: _____			
<input type="checkbox"/> _____ pages of Specification <input type="checkbox"/> _____ pages of Claims <input type="checkbox"/> _____ pages of Abstract <input type="checkbox"/> _____ pages of Formal/Informal Drawings <input type="checkbox"/> Small Entity <input type="checkbox"/> Large Entity <input type="checkbox"/> Declaration/Power of Attorney <input type="checkbox"/> Recordation of Assignment/Security Agreement <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> _____ Form PTO 1449 <input type="checkbox"/> _____ copies of cited references <input type="checkbox"/> Preliminary Amendment <input type="checkbox"/> Response to Missing Parts Notice <input type="checkbox"/> Resp. to Notice to Correct App. Papers		<input type="checkbox"/> Letter submitting _____ pages of drawings <input type="checkbox"/> Req. for Approval of Drawing Amendments <input type="checkbox"/> Req. for Oral Hearing <input type="checkbox"/> Not. of Appeal <input type="checkbox"/> Appeal Brief <input type="checkbox"/> Reply Brief <input type="checkbox"/> Rule 312 Amendment/Letter <input type="checkbox"/> Req. for Acknowledgement of Cited Art <input type="checkbox"/> Issue Fee <input type="checkbox"/> Publication Fee <input type="checkbox"/> Req. for Certificate of Correction <input type="checkbox"/> Maintenance Fee for _____ years after grant <input type="checkbox"/> Fee Address Indication Form <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Petition to Commissioner <input type="checkbox"/> Status Inquiry <input checked="" type="checkbox"/> Other: <u>RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION; July 22, 02 Letter from Client; August 21, 02 Letter from Mr. Perez with Declaration; Copy of Attorney's Docket of August 21, 2002; Three 132 Declarations of Toffenetti, Mullenax and Bell</u>	
<input type="checkbox"/> Certified Copy of Priority Doc.		<input checked="" type="checkbox"/>	
Check for \$	<input type="checkbox"/> Charge Deposit Acct. 500417\$	0	Atty Init. JLT Tkpr. # 6740 Secy. or PL: KBell



CMS Descrip.: \_\_\_\_\_

THE PATENT AND TRADEMARK OFFICE DATE STAMPED HEREON IS ACKNOWLEDGEMENT THAT THE ITEMS, CHECKED ABOVE, WERE RECEIVED BY THE PTO ON THE DATE STAMPED.

Docket No.: 50341-041

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of	:	Customer Number: 20277
Joanne Elizabeth BURN, et al.	:	Confirmation Number: Unknown
Serial No.: 09/857,346	:	Group Art Unit: not yet assigned
Filed: June 04, 2001	:	Examiner: not yet assigned
For: CONTROL OF FLOWERING	:	

**RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION**

Mail Stop Unknown  
Commissioner for Patents  
BOX PCT – Examiners Bryan Tung and George M. Dombroske-PCT LEGAL OFFICE  
Alexandria, VA 22313-1450

Sir:

This is in response to the Decision mailed March 17, 2004 concerning the Request for Reconsideration filed October 1, 2003. The Decision states that the Patent Office Records contain only two Declarations executed by Inventors Burn; Peacock; Dennis; Sheldon; Helliwell and Rouse and that the burden of proof of filing the third Declaration executed by Perez lies with the undersigned.

We affirm that the stamped date receipt card evidencing the filing of the Response to Missing Requirements indicates that the Declaration/ Power of Attorney was attached. It did not specify three (3) Declarations since the undersigned considered the filing of the Declarations containing all the inventors signatures to be in full compliance with the requirement for filing a Declaration/Power of Attorney.

Since the Office is requiring additional support for the filing of the Declaration executed by Inventor Perez, it is respectfully pointed out that a three month extension of time was

09/857,346

necessary to allow time for receipt of the Perez Declaration. In that regard, we provide copies of letters between Counsel, the client and Mr. Perez. You will note that on July 22, 2002 Counsel received *via* facsimile from the client the executed Declarations/Power of Attorney for all the inventors except Mr. Perez, (the receipt of these documents on July 22, 2002 was within the second month extended period for response; copy enclosed). However, the documents were not filed at that time, but held until August 22, 2002 to provide Mr. Perez the opportunity to provide his declaration. It had been decided by the client that in the event that Mr. Perez did not provide a declaration a Petition Under 37 C.F.R. § 1.47(a) would be filed. However, Counsel received *via* facsimile a letter dated August 21, 2002 from Mr. Perez forwarding his Declaration (the receipt of this document on August 21, 2002 is indicated on the enclosed document and was within the third month extended period for response). A complete Response with a three month extension of time was filed on August 22, 2002, one day after the facsimile receipt of the Perez Declaration and within the three month extended deadline.

The undersigned attorney's file contains a copy of all three Declarations with the Response to the Missing Parts and other documents that were filed therewith. There is no reason to believe that the Perez Declaration was not filed with the original Response to the Missing Requirements as every effort was made to obtain the signature of Mr. Perez prior to filing a complete Response to the Notice to File Missing Requirements. It can only be presumed that the Declaration was misplaced after the deposit of the Response at the U.S. Patent and Trademark Office.

In further support that the Declaration of Pascual Perez was filed on August 22, 2002, attached herewith are (1) my Declaration under 37 CFR 1.132 as the attorney who reviewed and executed the Response to Missing Requirements filed on August 22, 2002; reviewed and

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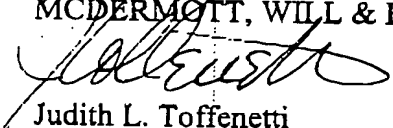
executed the Response to Notification of Defective Response filed March 6, 2003 and reviewed and executed the Request for Reconsideration filed October 1, 2003; (2) Lorna Mullenax's Declaration under 37 CFR 1.132, the Intellectual Property Paralegal Coordinator who receives and docket all mail pertaining to new applications, including but not limited to U.S. Patent Office Communications, as well as Client's communications relating thereto; and (3) Katherine Bell's Declaration under 37 CFR 1.132, the Intellectual Property Coordinator who reviewed the Decision of September 5, 2003 and prepared the Request for Reconsideration filed October 1, 2003.

Therefore, reconsideration of this Decision is requested. It is respectfully requested that the Declaration signed by Pascual Perez be accorded the actual filing date of August 22, 2002.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT, WILL & EMERY

  
Judith L. Toffenetti  
Registration No. 39,048

600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
(202) 756-8000 JLT:kmb  
Facsimile: (202) 756-8087  
Date: **March 30, 2004**

**GH**  
**GRIFFITH HACK**  
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**Facsimile Transmission**

**ORIGINAL  
COPY**

**TO:** McDermott Will & Emery  
**ATTENTION:** Ms Judith L. Toffenetti  
**FAX No.:** 0015 1 202 756 8087  
**DATE:** 22 July 2002  
**SENDER:** Dr Vivien Santer  
**SUBJECT:** United States Of America Patent Application No. 09/857346  
**YOUR REF:** 50341-041  
**OUR REF:** VS:CE:FP14526  
**PAGES:** 13 (including this page)

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MELBOURNE SYDNEY PERTH BRISBANE

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**GH**  
**GRIFFITH HACK**  
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McDermott Will & Emery  
600 Thirteenth Street N W  
Washington DC 20005-3096  
USA

Attention: Ms Judith L. Toffenetti

**BY FACSIMILE**  
0015 1 202 756 8087  
**CONFIRMATION BY COURIER**

22 July 2002

Dear Ms Toffenetti

United States Of America Patent Application No. 09/857346  
In the name of COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH  
ORGANISATION and PASCUAL PEREZ  
Entitled CONTROL OF FLOWERING  
Your Ref: 50341-041  
Our Ref: VS:CE:FP14526

Further to your telefax dated 27 June 2002, please find enclosed the combined declaration and power of attorney form duly executed by all of the inventors except Dr Perez, as well as an executed assignment document for filing in response to the Notification of Missing Parts. Please note that one of the inventors, Dean Thomas Rouse, has signed the forms separately, and these forms are also enclosed. The original signed documents are being forwarded by courier with confirmation of this telefax.

MELBOURNE

SYDNEY

PERTH

BRISBANE

Associated with Computer Patents Australia Limited Partnership Affiliates with Griffith Hack Lawyers

- 2 -

**GRIFFITH HACK**  
PATENT AND TRADE MARK ATTORNEYS

**McDermott Will & Emery**

**22 July 2002**

Kindly acknowledge receipt of these instructions.

Yours sincerely  
**GRIFFITH HACK**



**Dr Vivien Santer**  
Principal  
vivien.santer@griffithhack.com.au

Enc





biogemma

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21 2002

McDERMOTT, WILL &amp; EMERY

ORIGINAL

TELECOPIE

A : Judith TOFFENETTI  
Compagnie : Mc Dermott, Will & Emery  
Télécopie : 1.202.756.8087  
COPIE : Rob de Feyter  
JC. Gousche - P. Roger

De : Pascual PEREZ  
Compagnie : BIOGEMMA  
Téléphone : 04.73.42.79.70  
Télécopie : 04.73.42.79.81

Date : 21/08/02  
Nombre de Pages, y compris cette page : 4

Re : US Patent application N° 09/357346

Dear Miss Toffenetti,

You will find enclosed a copy of Declaration and Power of Attorney signed by myself as agreed with M. Rob Defeyter from CSIRO Plant Industry.

I am mailing to you the original document by rapid mail (D.H.L.) August 22<sup>nd</sup>.

Sincerely yours

Pascual PEREZ  
Research Coordinator  
Site Director  
BIOGEMMA  
24, Avenue des Landais  
63170 - AUBIERE - France  
tel : 33.4.73.42.79.70  
fax : 33.4.73.42.79.81  
e.mail : pascual.perez@biogemma.com

Docker No.: 50341-041

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I hereby declare that:

My residence, post office and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter claimed and for which a patent is sought on the invention entitled **CONTROL OF FLOWERING**, the specification of which

☐ is attached hereto.☒ was filed on June 4, 2001 as Application Serial No. 09/857,346 and was amended on (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is known to me to be material to patentability in accordance with Title 37, Code of Federal Regulations, Section 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

**Prior Foreign Applications(s):**

Number	Country	Day/Month/Year filed	Priority Claimed
PP 7469	AUSTRALIA	Decmeber 3, 1998	<input checked="" type="checkbox"/>

I hereby claim the benefit under 35 USC §119(e) of any United States provisional application(s) listed below.

**Prior Provisional Application(s):**

Application Number	Filing Date
60/116928	January 22, 1999

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, Section 1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

**Prior U.S. Application(s):**

Serial No.	Filing Date	Status: Patented, Pending, Abandoned
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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereby appoint the following attorney(s) and/or agent(s): Stephen A. Becker, Reg. No. 26,527; John G. Bisbikis, Reg. No. 37,095; Christopher D. Bright, Reg. No. 46,578; Daniel Bucca, Reg. No. 42,368; Kenneth L. Cage, Reg. No. 26,151; Jennifer Chen, Reg. No. 42,404; Bernard P. Codd, Reg. No. 46,429; Lawrence T. Cullen, Reg. No. 44,489; Paul Devinsky, Reg. No. 28,553; Margaret M. Duncan, Reg. No. 30,879; Shamita De. Etienne-Cummings, Reg. No. 46,072; Ramyar M. Farid, Reg. No. 46,692; Brian E. Ferguson, Reg. No. 36,801; Michael E. Fogarty, Reg. No. 36,139; John R. Fuisz, Reg. No. 37,327; William F. Gadiano, Reg. No. 37,136; Keith E. George, Reg. No. 34,111; Matthew V. Grumbling, Reg. No. 44,427; John A. Hankins, Reg. No. 32,029; Joseph Hyosuk Kim, Reg. No. 41,425; Eric J. Kraus, Reg. No. 36,190; Catherine Krupka, Reg. No. 46,227; Jack Q. Lever, Reg. No. 28,149; Raphael V. Lupo, Reg. No. 28,363; Burman Y. Mathis III, Reg. No. 44,907; Michael A. Messina, Reg. No. 33,424; Dawn L. Palmer, Reg. No. 41,238; Joseph H. Paquin, Jr., Reg. No. 31,647; Scott D. Paul, Reg. No. 42,984; William D. Pegg, Reg. No. 42,988; Robert L. Price, Reg. No. 22,685; Gene Z. Robinson, Reg. No. 33,351; Joy Ann G. Scrauskas, Reg. No. 27,952; Daniel H. Sherr, Reg. No. 46,425; David A. Spenard, Reg. No. 37,449; Arthur J. Steiner, Reg. No. 26,106; David L. Stewart, Reg. No. 37,578; Wesley Strickland, Reg. No. 44,363; Michael D. Switzer, Reg. No. 39,552; Daniel S. Trainor, Reg. No. 43,959; Cameron K. Weiffenbach, Reg. No. 44,488; Aaron Weissstuch, Reg. No. 41,557; Edward J. Wise, Reg. No. 34,523; Jeffrey A. Woller, Reg. No. 48,041; Alexander V. Yampolsky, Reg. No. 36,324; and Robert W. Zelnick, Reg. No. 36,976 all of

McDERMOTT, WILL & EMERY  
600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096

Direct Telephone Calls to: Telephone 202-756-8000

with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith, and all future correspondence should be addressed to them.

Full name of sole or first inventor: Joanne Elizabeth BURN

Inventor's signature:

Date:

Residence: WATSON, AUSTRALIAN CAPITAL TERRITORY, AUSTRALIA

Citizenship: AUSTRALIA

Post Office Address: 84 A' BECKETT STREET, WATSON, AUSTRALIAN  
CAPITAL TERRITORY 2602 AUSTRALIA

Full name of second inventor: William James PEACOCK

Inventor's signature:

Date:

Residence: DEAKIN, AUSTRALIAN CAPITAL TERRITORY, AUSTRALIA

Citizenship: AUSTRALIA

Post Office Address: 16 BRASSEY STREET, DEAKIN, AUSTRALIAN CAPITAL  
TERRITORY 2600 AUSTRALIA

Full name of third inventor: Elizabeth Salisbury DENNIS

Inventor's signature:

Date:

Residence: DEAKIN, AUSTRALIAN CAPITAL TERRITORY

Citizenship: AUSTRALIA

Post Office Address: 100 HOPETOUN CIRCUIT, DEAKIN, AUSTRALIAN  
CAPITAL TERRITORY 2600 AUSTRALIA

Full name of fourth inventor: Candice Claire SHELDON

Inventor's signature:

Date:

Residence: SUTTON, NEW SOUTH WALES, AUSTRALIA

Citizenship: AUSTRALIA

Post Office Address: 1 QUARTZ STREET, SUTTON, NEW SOUTH WALES 2620  
AUSTRALIA

Full name of fifth inventor: Pascual PEREZ

Inventor's signature:

Date: 21<sup>st</sup> August 20

Residence: AUBIERE, FRANCE

Citizenship: FRENCH

Post Office Address: C/ LABORATOIRE DE BIOLOGIE CELLULAIRE ET  
MOLECULAIRE, CAMPUS UNIVERSITAIRE DES CEZEAUX, 24 AVENUE DE  
LANDAIS, F-63107 AUBIERE, FRANCE

Full name of sixth inventor: Christopher Andrew HELLIWELL

Inventor's signature:

Date:

Residence: KALEEN, AUSTRALIAN CAPITAL TERRITORY

Citizenship: GREAT BRITIAN

Post Office Address: 25A BINGHAM CIRCUIT, KALEEN, AUSTRALIAN  
CAPITAL TERRITORY 2617 AUSTRALIA

Full name of seventh inventor: Dean Thomas ROUSE

Inventor's signature:

Date:

Residence: MACGREGOR, AUSTRALIAN CAPITAL TERRITORY, AUSTRALIA

Citizenship: AUSTRALIA

Post Office Address: 131 OSBURN DRIVE, MACGREGOR, AUSTRALIAN  
CAPITAL TERRITORY 2615 AUSTRALIA

Docket No.: 50341-041

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of	:	Customer Number: 20277
Joanne Elizabeth BURN, et al.	:	Confirmation Number: Unknown
Serial No. 09/857,346	:	Group Art Unit: not yet assigned
Filed: June 04, 2001	:	Examiner: not yet assigned
For: CONTROL OF FLOWERING	:	

**DECLARATION UNDER 37 C.F.R. § 1.132**

Mail Stop Unknown  
Commissioner for Patents  
BOX PCT – Examiners Bryan Tung and George M. Dombroske-PCT LEGAL OFFICE  
Alexandria, VA 22313-1450

Sir:

I, Judith Toffenetti, do hereby declare and say as follows:

1. I am the Judith Toffenetti listed as an attorney of record in this patent application

Serial No.09/857,346;

2. That the inventors of the invention claimed in this patent application are Joanne Elizabeth Burn, William James Peacock, Elizabeth Salisbury Dennis, Candice Claire Sheldon, Pascual Perez, Christopher Andrew Helliwell and Dean Thomas Rouse;

3. That on July 22, 2002 (within the period for response requiring a petition and fee for a two month extension of time) our office received *via* facsimile a declaration in two parts of six of the seven named inventors: a first declaration executed by Joanne Elizabeth Burn, William James Peacock, Elizabeth Salisbury Dennis, Candice Claire Sheldon and Christopher Andrew Helliwell; and a photocopy of the first executed declaration that was executed by Dean Thomas Rouse. A copy of the dated facsimile is enclosed herewith.

4. The declaration was not filed with the U.S.P.T.O. at that time because I still had not obtained an executed declaration from Pascual Perez.

5. On August 21, 2002, our office received by facsimile the declaration and power of attorney signed by Pascual Perez. The Perez declaration and accompanying letter from Pasual Perez were delivered to the Intellectual Property Paralegal Coordinator, Lorna Mullenax, and matched with the application file, which was in my office. A copy of the date stamped facsimile showing receipt of the Perez declaration at McDermott, Will & Emery on August 21, 2002 is enclosed.

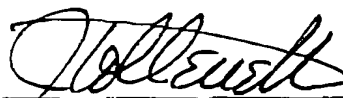
6. On August 21, 2002 I reviewed the three part declaration, and sequence list that had been prepared in response to the Notice of Missing Parts and sent an e-mail to the client indicating that I had received Pascual Perez's declaration. A redacted copy of my docket record for August 21, 2002, recording these events is enclosed. I sent the file to our paralegal staff for preparation of a Response to Notice of Missing Parts, and copying of accompanying documents, in preparation for filing with the U.S.P.T.O. the following day (August 22, 2002).

6. On August 22, 2002, I reviewed and signed the Response to Notice of Missing Parts, which included the declaration in three parts (including the Perez declaration), a response to Missing Requirements Notice, a Second Substitute Sequence Listing and Preliminary Amendment, a Supplemental Information Disclosure Statement, an assignment, a petition for a three month extension of time and a post card listing the documents being filed.

7. The complete Response to Notice of Missing Parts (including all accompanying documents) was copied, the various documents were clipped together and delivered to a courier for filing with the U.S.P.T.O. A copy of each of the documents filed with the U.S.P.T.O. was placed in the working application file. A date stamped post card accompanying the response and

documents filed with the U.S.P.T.O. evidences that the response and the above-discussed documents were filed with the U.S.P.T.O. on August 22, 2002.

Further, I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Judith Toffenetti  
Reg. No. 39,048

Date: Mar 30, 2004

WEDNESDAY | 21 | AUGUST

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Review doc; reviewed sig list -

3/4

prepare for filing; send - email

140-6



Docket No.: 50341-041

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**DECLARATION UNDER 37 C.F.R. § 1.132**

Mail Stop Unknown  
 Commissioner for Patents  
 BOX PCT – Examiners Bryan Tung and George M. Dombroske-PCT LEGAL OFFICE  
 Alexandria, VA 22313-1450

Sir:

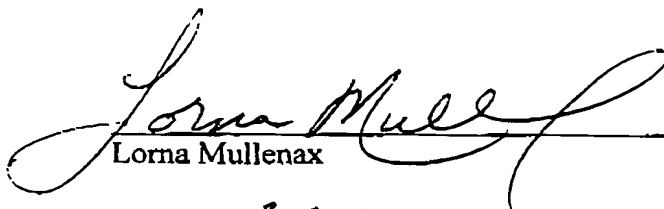
I, Lorna Mullenax, do hereby declare and say as follows:

1. I am the Intellectual Property Paralegal Coordinator at McDermott, Will & Emery.
2. On August 21, 2002 I received from our docketing staff a facsimile from Pascual Perez which included an executed declaration (the "Perez declaration"). The Perez declaration was matched with the patent application file, which was in Judith Toffenetti's office (attorney of record).
3. On August 22, 2004, a Response to Notice of Missing Parts was prepared by the paralegal staff, reviewed and signed by Judith Toffenetti, the various documents were clipped together, and given to a courier for delivery to and filing with the U.S.P.T.O. The Response to Notice of Missing Parts included a declaration in three parts (including an executed declaration by Pascual Perez), a response to Missing Requirements Notice, a Second Substitute Sequence Listing and Preliminary Amendment, a Supplemental Information Disclosure Statement, an

assignment, a Petition for a three month extension of time and a post card listing the documents being filed.

7. As is the custom in our office, a copy of each of these documents was made prior to filing and placed in the application file. A date stamped post card accompanying the response and documents evidences that the response and the above-discussed documents were filed with the U.S.P.T.O. on August 22, 2004.

Further, I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

  
Lorna Mullenax  
Date: 3-30-04

Docket No.: 50341-041

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of	:	Customer Number: 20277
	:	
Joanne Elizabeth BURN, et al.	:	Confirmation Number: Unknown
	:	
Serial No.: 09/857,346	:	Group Art Unit: not yet assigned
	:	
Filed: June 04, 2001	:	Examiner: not yet assigned
	:	
For: CONTROL OF FLOWERING	:	

**DECLARATION UNDER 37 C.F.R. 132**

Mail Stop Unknown  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Katherine Bell, do hereby declare and say as follows:

(1) I am the Intellectual Property Coordinator at McDermott, Will & Emery and have more than 30 years experience in the Patent field.

(2) The U.S. Patent Office Decision of September 2, 2003 in response to the "Response to Notification of Defective Response" filed on March 6, 2003 was received and matched with the file on September 8, 2003. The Decision and file were forwarded to my desk for docketing and review. The Decision indicated that the International application was filed on December 2, 1999; on June 4, 2001 the basic national fee was filed; on March 22, 2002 a Notification of Missing Requirements was mailed; on August 22, 2002 Applicants filed a Declaration of the inventors and on February 11, 2003 a Notification of Defective Response was mailed indicating

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the fifth inventor had not executed the Declaration. The Response to Notification of Defective Response that Applicants filed on March 6, 2003 indicated that three Declarations containing all the inventors signatures were filed on August 22, 2002 in Response to Notification of Missing Requirements.

(3) A review of the three part file indicated the contents as follows:

(a) All correspondence from the client and Counsel are kept on the left hand-side in date order, with the most recent correspondence on top;

(b) All Patent Office Communications and Responses are kept in the middle section of the file in date order, with the most recent communication/response on top; and

(c) Any Drawings are kept on the right-hand side of the file.

(4) In preparing the Request for Reconsideration filed on October 1, 2003, I noted the file contained the following:

(a) A Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DOEO/US) was mailed March 22, 2002 indicating that the Oath or declaration of the inventors was missing in compliance with 37 CFR 1.497(a) and (b) and a substitute computer readable form of the sequence listing, together with a computer readable form and amendment to the specification were also due . A due date of two months; i.e. May 22, 2002 was set with the indication that extensions were available.

(b) A letter of April 22, 2002 sent to the client reporting the Notification of Missing Requirements and enclosing a Declaration and Assignment documents for execution by the inventors.

(c) E-mail correspondence indicating there was a problem with obtaining Mr. Perez's signature from the client;

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(d) E-mail correspondence between Counsel and client regarding extending the Response deadline;

(e) A letter of July 22, 2002 from the client forwarding the Combined Declaration of Inventors Burn; Peacock; Dennis; Sheldon and Helliwell; and a second Combined Declaration of Inventor Rouse, containing photocopy signatures of the previous five Inventors.

(f) A letter of August 13, 2002 to the client indicating that we had not filed the Declaration of Inventors Burn; Peacock; Dennis; Sheldon and Helliwell and the Declaration of Inventor Rouse as yet and that the non-extendable deadline was August 22, 2002.

(g) A letter of August 21, 2002 from Mr. Pascual Perez forwarding his Declaration and Power of Attorney received by Facsimile with a notation that the original was being forwarded by DHL.

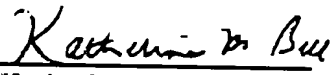
(h) A Response to Notification of Missing Requirements containing Declaration and Power of Attorney (which is in compliance with 37 CFR 1.63); Second Substitute Sequence Listing and Preliminary Amendment; Information Disclosure Statement; Assignment; Petition for Three Month Extension of Time were filed on August 22, 2002. The file copy of this Response had attached in the following order copies of a Combined Declaration signed by Inventors Burn, Peacock, Dennis, Sheldon and Helliwell; a Combined Declaration signed by Burn, Peacock, Dennis, Sheldon, Helliwell and Rouse; a Declaration and Power of Attorney signed by Pascual Perez; Substitute Sequence Listing in paper form; a Response to Notification of Missing Requirements Under 35 USC 371, Second Substitute Sequence Listing and Preliminary Amendment; Petition for Extension of Time; Supplemental Information Disclosure Statement.

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(5) After review of the Patent Office Decision of September 2, 2003 and the file, I then prepared the Request for Reconsideration attaching copies of the stamped date receipt card of August 22, 2002; Response to Notification of Missing Requirements; Declaration and Power of Attorney of Pascual Perez; Combined Declaration of Inventors Burn, Peacock, Dennis, Sheldon and Helliwell; Combined Declaration of Inventor Rouse. The Request for Reconsideration was filed on October 1, 2003.

(6) It was apparent from my review that we had waited to file the Response to Notification of Missing Requirements until we had received all the Inventors' signatures; that our file contained in order the papers that were submitted with the Response and copies of all three Declarations were secured in the file.

Further, I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

  
Katherine M. Bell  
Date: March 30, 2004

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Date: March 30, 2004

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